that the dissolution was something like the inception of the union, that no actual ceremony was needed, and it depended upon the actual intention and notoriety given to the union or dissolution.

"In the present case there was evidence that there was a disturbance in the house, and that Tan Sai Im was accused of improper conduct and was turned out of the house. Three witnesses were called to give evidence that the husband told them what had happened, and that he had ceased to have anything further to do with her. If that evidence was to be believed it certainly constituted a divorce according to the evidence of custom given by the Consul-General. There were several circumstances which seemed to point to the inevitable conclusion that the parties thought that the dissolution was complete. He had come to the conclusion that the evidence of the defence should be accepted, and that Tan Sai Im was not, at the time of Siew Guan's death his secondary wife. The answer to the issue would be that Tan Sai Im was not a lawful widow of the deceased."

Lastly, in the *Khoo Thean Tek* Case (1930) A.C. 346, the Privy Council at p. 353 accept the evidence of Mr. Beatty, who was called as an expert in Chinese customs, that a *t'sip* could not be put away who has borne a son. This implies that if she has not borne a son she can be put away.

I accept with respect the reasoning of Shaw, C.J. that just as in the case of the formation of a secondary marriage, its dissolution can be proved by intention and repute.

Applying these principles to the facts of the present case, it has been proved that the Plaintiff was deserted by Lee Pang Seng some time in 1922. Thereupon she sent Tan Cheng Seah to intercede with Lee Pang Seng on her behalf. I accept his evidence on this point. He says:

"She did ask me in 1922 to see Lee Pang Seng about the allowance. Lee Pang Seng said she was unfaithful and that he would not give her any more money. He said he would not have anything more to do with her. I told the Plaintiff. She said nothing."

This does not of course prove that she was unfaithful, but it does prove a definite intention to break off the relationship which was communicated to her and which by her subsequent conduct she accepted. I have already referred to the fact that she had no further communication with Lee Pang Seng until his death 8 years later and during the 8 years of her intimacy with Lew Ah Wee she never told him that she was married.

I have already intimated that the fact of the severance of the relationship after four years is not as conclusive as it would be if there had been issue to raise a presumption that there had never been a marriage. If, however, there was a marriage and no issue, the presumption is all the stronger that there was a divorce.

I find accordingly that if there was a marriage by intention and repute, there is ample evidence that the marriage was similarly dissolved and that accordingly the Plaintiff cannot claim to have the status of having been a secondary wife of Lee Pang Seng after 1922.

Action dismissed.

Application in Suit 121 of 1931 dismissed.

Solicitor for Plaintiff (Lew Ah Lui):— *R. Williamson.*

Solicitors for 1st, 2nd and 3rd Defendants (Trustees):— *Allen & Gledhill.*

Solicitors for 5th Defendant (Chee Suat Goh):— *Braddell Brothers.*

[APPELLATE CRIMINAL JURISDICTION]

HUGGARD, C.J., PRICHARD & TERRELL, JJ.

January 12, 1935.

REX vs. LATIP BIN HAIDIN

[SINGAPORE CRIMINAL APPEAL No. 58 of 1934]

[MALACCA CRIMINAL APPEAL No. 8 of 1934]

Ordinance No. 45 (Common Gaming Houses) Ss. 4 (d) and 4 (c)—selling lottery tickets and assisting in carrying on a public lottery.

A *bona fide* private lottery cannot become an illegal lottery by the unauthorised act of a single one of its members in selling tickets to the public. A lottery only becomes a public lottery if the public or any class of the public has or may have access to it. But a person may make use of tickets in a private lottery for the purpose of promoting or organising a separate and distinct lottery of his own and if he does so then such subsidiary lottery is deemed to be a public lottery until the contrary is proved and will subject persons assisting in carrying it on or selling tickets therein to the penalties prescribed by the Ordinance.

Magistrates Appeal.

The Malacca Magistrate convicted the accused on two charges of (1) selling lottery tickets contrary to S. 4 (d) of Ordinance No. 45 (Common Gaming Houses) and

(2) Assisting in carrying on a public lottery contrary to S. 4 (c) of the same Ordinance.

The accused appealed from the conviction and on the request in writing of the Public Prosecutor made under S. 299 (3) of the Criminal Procedure Code the appeal was reserved for hearing and came on for hearing at Singapore on

the 12th January, 1935 before a Court consisting of Huggard, C.J., and Prichard and Terrell, JJ.

S. C. Goho, for the Appellant.

Adrian Clark, D.P.P., for the Crown.

The facts and arguments sufficiently appear from the Judgments.

Cur. Ad. Vult.

HUGGARD, C.J —The Appellant was charged and convicted by the Magistrate at Malacca on charges of:—

(1) selling lottery tickets contrary to section 4 (d) of Ordinance No. 45 (Common Gaming Houses); and

(2) assisting in carrying on a public lottery contrary to section 4 (c) of the same Ordinance.

The appeal comes before this Court by request of the Public Prosecutor under section 299 (3) of the Criminal Procedure Code.

Evidence was given in the Court below to the effect that the Penang Turf Club organised a lottery or sweepstake on a race run at Penang on the 2nd August, 1934. According to the evidence of Mr. Vickers the Secretary of the Penang Turf Club this lottery was a private lottery, the sale of tickets being confined to members of the Turf Club. One K. P. Y. Ismail of 9 Mill Road, Malacca, was a member of the Penang Turf Club and in that capacity he purchased 210 tickets in the lottery. The Appellant was an employee of K. P. Y. Ismail and it was alleged that on the 2nd August, 1934 (the actual day of the race) he sold to one Appasamy Pather (who was not a member of the Penang Turf Club) three of the tickets in the lottery which had been issued by the Club to his employer. Evidence was also given of a sale of a fourth ticket to one V. Emanuel Nonis, but the charges against the Appellant related only to the sale to Appasamy Pather. It was also proved that when the Appellant was arrested a piece of paper (Exhibit "C") was found in his possession. This paper contains a series of numbers, and opposite certain of these numbers appear names in English or in Tamil. The names of Appasamy Pather and of Nonis appear opposite the numbers of the tickets which they purchased from the Appellant.

It is unnecessary to go in detail into the evidence regarding the sale of these tickets. It is sufficient to say that the learned Magistrate found as a fact that the Appellant had sold the tickets and was selling them to anyone who cared to buy them. In my opinion there was ample evidence to support that finding.

On this finding of fact the learned Magistrate held, in effect, that the act of the Appellant in selling tickets in the Penang Turf Club lottery had converted that private lottery into a public lottery, and that the Appellant was therefore guilty on both charges.

It will be convenient at this stage to turn to the relevant provisions of the Ordinance. Under section 4 (d) of the Ordinance it is an offence to sell or offer for sale a lottery ticket, and under section 4 (c) it is an offence to assist in carrying on a public lottery.

The expression "Lottery Ticket" is defined in section 2 of the Ordinance as including: —

> "any paper or figure or writing or symbol or other article whatsoever which either expressly or tacitly entitles or purports to entitle the holder or any other person to receive any money or money's worth on the happening of any event or contingency connected with a public lottery."

The definition of "Public Lottery" is: —

> "a lottery to which the public or any class of the public has or may have access,"

and this definition further declares that every lottery shall, until the contrary is proved, be deemed to be a public lottery.

It is clear from these provisions that before a person can properly be convicted of an offence under either paragraph (d) or paragraph (c) of section 4 of the Ordinance there must exist a public lottery, that is to say, a lottery to which the public or any class of the public has or may have access, but it has to be borne in mind that once a lottery is shown to exist it is deemed to be a *public lottery* until the contrary is proved.

In the present case there was, of course, a lottery in existence at the Penang Turf Club, but Mr. Vickers' evidence was that it was a private lottery and that the sale of tickets to non-members of the Turf Club was contrary to the rules of the Club. It has not been suggested that the Committee of the Club were aware of or in any way approved or acquiesced in the sale of these tickets. In these circumstances Mr. Goho for the Appellant contends that he has discharged the onus of showing that the Penang Turf Club lottery was not a public lottery, and he further contends as a matter of law that the unauthorised act of a member in selling a ticket or tickets in a private lottery to an outsider cannot convert that lottery into a public lottery. In my opinion this latter contention is perfectly sound, and the learned Deputy Public Prosecutor in replying to Mr. Goho's argument in this Court expressly declined to support the proposition (which has been advanced in more than one local case) that, where a private club runs a *bona fide* private lottery, the unauthorised act of a single one of its members in selling tickets to the public makes the the whole of that lottery an illegal lottery.

A lottery only becomes a public lottery if the public or any class of the public has or may

have access to it. The Ordinance does not contain a definition of the term "access" and the term as used in this connection does not appear to have been judicially defined, but it appears to me that a reasonable interpretation to be placed on the words "to which the public or any class of the public has or may have access" as used in relation to lotteries is—"in which the public or any class of the public is entitled or permitted to participate." Admittedly every lottery is presumed to be a public lottery until the contrary is proved, but in my opinion the contrary has been proved here by the evidence of Mr. Vickers. It is clear from his uncontradicted evidence and from the conditions on the back of the sweepstake tickets that the Club would recognise only its own members and would in no circumstances pay any prize-money to a stranger. It is equally clear that a purchaser of any of these tickets could not successfully maintain any claim in respect of them against the Club, as, apart from any other defence which the Club might set up, no privity of contract could be shown to exist between the purchaser and the Club (*Jones* v. *Carter*, 8 Q. B. Reports, 134).

In my opinion it follows from this that the unauthorised sale of these tickets by the Appellant to a non-member of the Penang Turf Club did not give the purchaser access to the Turf Club lottery, and therefore that lottery never became a public lottery.

This conclusion, however, does not dispose of the case against the Appellant. I am unable to accept Mr. Goho's contention that once it is established that the act of the Appellant had not converted the Penang Turf Club lottery into a public lottery, then the Appellant could not have committed an offence and should be acquitted. The Appellant was charged with selling lottery tickets and with assisting in a public lottery, and the question is whether on the evidence the Appellant was rightly convicted upon those charges.

The learned Deputy Public Prosecutor in supporting the conviction contends that on the facts proved in the Court below, to which I have already referred, it is apparent that the Appellant's employer, K. P. Y. Ismail, was organising a separate and distinct lottery of his own. The general proposition advanced by the learned Deputy Public Prosecutor is that where an individual member of a Club purchases a number of tickets in a private lottery promoted by that Club and then proceeds to sell those tickets or some of them to the public, he may himself be guilty of promoting or organising a public lottery, using the tickets purchased by him in the private lottery as a means to that end.

In replying to this proposition Mr. Goho for the Appellant suggested that so long as the sale of tickets was confined to friends of the member, the lottery, if any, would be a private, and therefore a legal, lottery. He failed, however, to produce any authority which would indicate that there is any distinction in law between a sale to a friend and a sale to a stranger, and I am satisfied that no such authority exists. If the sale of tickets to members of the public creates an offence I am unable to see how the fact that the purchasers may happen to be friends of the seller can make any essential difference.

Mr. Goho further argued that this proposition had not been advanced in the Court below and that therefore he should not at this stage be called upon to meet it. But I know of nothing which precludes the prosecution from contending that a conviction should be sustained on legal grounds which had not been advanced or discussed in the lower Court. In any event the Appellant here can hardly be prejudiced as Mr. Goho frankly admitted that he had in fact considered the proposition and had discussed it with members of the Bar.

In my opinion the general proposition put forward by the learned Deputy Public Prosecutor is perfectly sound. There is nothing to prevent a person from making use of tickets in a private lottery for the purpose of promoting or organising a separate and distinct lottery of his own. A lottery may be founded upon perfectly legal investments (*Sykes* v. *Beadon*, 11 Ch. Div. 170 at page 190). It is unnecessary, in order to constitute a lottery, that the promoter should himself provide a prize or prizes (*Bartlett* v. *Parker*, 1912, 2 K.B. 497). It is also unnecessary that the promoter should be connected with the drawing of the prizes or that he should be in any way concerned in the event which is to determine the distribution of the prizes (*Reg.* v. *Crawshaw*, 8 Cox C.C. 375). And it is unnecessary that the promoter should make any personal profit out of the lottery (*Barclay* v. *Pearson*, 1893, 2 Ch. 154).

It may be suggested, in view of the definition of the term "Lottery" in section 2 of the Ordinance, that there cannot be a lottery unless there is an actual distribution or allotment of money or money's worth. I do not think that such a suggestion should be accepted. The term "Lottery" is defined as *including* any..... method.....whereby money or money's worth is distributed or allotted in any manner depending upon.....chance, whether the same is held, drawn, exercised or managed within or without the Colony. In my opinion the use of the word "includes" indicates clearly that this definition is not intended to be comprehensive or exhaustive, or to exclude the ordinary and generally accepted meaning of the term. As Lord Watson

said in *Dilworth* v. *Commissioner of Stamps*, (1899) A.C. at pages 105-106:—

> " The word " include " is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include."

As regards the definition of " Lottery " I think the correct view is that indicated by Mr. Roland Braddell in his Commentary on Common Gaming Houses, 2nd Edition at pages 15-16, which is that the local definition is merely an extension of the definition of the term as accepted in England. I am therefore of opinion that for the purposes of our Ordinance we have to work on the generally accepted definition and regard the local definition as an extension of that generally accepted definition. Now the accepted definition of "Lottery" in England is "a scheme for distribution of prizes by lot or chance" (*Taylor* v. *Smetten*, L.R. 11 Q.B.D. 207; *Barclay* v. *Pearson*, 1893, 2 Ch. 154). As Mr. Braddell points out at page 16 of his Commentary, the essential element in both definitions is *chance*. This view has the support of Ridley, J. in *Bartlett* v. *Parker (supra)*, where he said at page 503:—

> " I think a lottery is held whenever there is a sale of tickets which gives the holders of them the chance of winning a prize."

It must, however, be pointed out that in the case cited the exact meaning of 'include' never arose for decision and I have found no case in which 'includes' has been cut down to the equivalent of 'means.' In any case I am of opinion that in the construction of the Ordinance before the Court there is nothing to indicate that the narrower construction was intended.

In my view, to adopt the phraseology of Lord Selborne in *Robinson* v. *Local Board of Barton-Eccles*, 8 A.C. at p. 801, "an interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular and natural sense wherever that would be properly applicable, but to enable the word as used in the Act, when there is nothing in the context or subject matter to the contrary, to be applied to some things to which it would not ordinarily be applicable."

The definition therefore in section 2 merely serves to bring within the scope of the Ordinance certain lotteries, namely those held outside the Colony, which might otherwise not have been included within it, and the word "lottery" can be considered as having its natural meaning, without reference to the definition in section 2.

I have already quoted the opinion expressed by Ridley, J. in *Bartlett* v. *Parker*, 1912, 2 K.B. p. 497. This case also shows that it is no less a lottery because the prizes come from an entirely independent source. The case of *Queen* v. *Crawshaw*, 8 Cox C.C. p. 375 is an authority for saying that the tickets may originally have come from some other quite independent lottery. A public lottery can even be founded on legal investments, *Sykes* v. *Beadon*, 11 Ch. D. p. 170 at p. 190, and this case meets the objection that the lottery, the subject of the charge, could not be a public lottery because the actual tickets dealt in were tickets in a lottery which was not contrary to law.

If the distribution and sale by or on behalf of K. P. Y. Ismail of tickets in a private lottery was itself a lottery, then it was for the appellant to show that such subsidiary lottery was not a public lottery, and this he has failed to do.

I would, therefore, dismiss the appeal and uphold the conviction and sentence.

TERRELL, J.—The accused was the employee of one K.P.Y. Ismail, a member of the Penang Turf Club, who had applied and paid for 210 tickets in a lottery held on a race run under the auspices of the Penang Turf Club on the 2nd August, 1934. The evidence proved that the accused sold 3 of these tickets for cash to one Appasamy Pather who was not a member of the Penang Turf Club. There was also evidence that K.P.Y. Ismail was in the habit of selling tickets in Penang Turf Club lotteries to members of the public.

The accused was convicted on two charges (a) of selling lottery tickets, and (b) of assisting in the carrying on of a public lottery. These offences are punishable under sections 4 (d) and 4 (c) of Ordinance No. 45 (Common Gaming Houses).

The learned Magistrate found that the public had access to the lottery tickets of the Penang Turf Club and that accordingly, although the lottery may have been originally a private lottery and was intended by its promoters to remain a private lottery, it had nevertheless become a public lottery. In coming to this decision the learned Magistrate followed the decision of Mudie, J. in *Lim Kiang* v. *Public Prosecutor*, Malayan Law Journal Vol. III, p. 224, in preference to that of Howes, J. in *Chin Tin Chin* v. *Public Prosecutor*, reported at p. 223 of the same volume.

On the appeal appellant's counsel argued that the evidence of Mr. S. C. Vickers, who was called by the prosecution, proved conclusively that the lottery was a private one, that there was no privity between the Turf Club and any non-member who had purchased a ticket, and

if the lottery was in fact a private one, nothing that a member might do in contravention to the rules of the Club could make it a public one.

In his reply the learned Deputy Public Prosecutor accepted most of these contentions and admitted that on the facts before the Court he could not argue that the Penang Turf Club lottery was an illegal lottery; he contended, however, that by obtaining and distributing tickets from the Penang Turf Club K. P. Y. Ismail was in fact conducting a separate lottery, and that such lottery was illegal and that the appellant was properly convicted on both counts, i.e. for selling tickets in a private lottery and for assisting in the carrying on of such lottery.

Counsel for the appellant thereupon submitted that this was not the case which he had been called upon to meet and that the whole argument before the learned Magistrate was directed to the point as to whether in the circumstances the Penang Turf Club lottery was or was not a public lottery.

From a perusal of the record and the grounds of judgment this submission appears to be correct and the suggestion that there might have been a subsidiary lottery was not considered by the learned Magistrate or by the learned Judges who decided the cases reported in Vol. III of the Malayan Law Journal. On the other hand the charges are perfectly general in form and would support charges in the form in which the learned Deputy Public Prosecutor now presents them. It was of course open to the accused at the original trial to have required the prosecution to specify with greater exactitude the particular lottery in respect of which he was charged, but as he did not do so, I am of opinion that it is too late to take an objection on appeal which might have been taken, if at all, in the Court below.

I will deal therefore first with the finding of the learned Magistrate, following the decision of Mudie J., that on the facts of this particular case the Penang Turf Club lottery was a public lottery. In my opinion this finding cannot be sustained. The learned Magistrate gives his reasons for such finding in para. 5 of his grounds of judgment where the following passage occurs:—

> "I therefore follow the finding of Mr. Justice Mudie that if the public has access to a lottery it cannot be maintained that the lottery is and remains a private one."

This finding rests on the assumption that it was proved that members of the public had access to the tickets of the Penang Turf Club lottery. I cannot find that this fact was established. The public certainly had access to certain tickets which were in the possession of K. P. Y. Ismail, which is a very different thing. The Penang Turf Club had quite properly issued tickets to one of their members and then that member very improperly distributed them or sold them to the public. I agree that if the Penang Turf Club deliberately issued tickets to its members with the knowledge and intention that they should be distributed to the public, the Club itself would merely have been a camouflage for the purpose of carrying on a public lottery, and the original lottery would itself have been illegal. But no attempt was made to establish any such proposition, and the learned Deputy Public Prosecutor expressly disclaimed any intention to draw such an inference, and on the facts it was proved that the Penang Turf Club lottery was not a public lottery.

There remains accordingly the argument that the accused was selling tickets in a subsidiary lottery organized by one K. P. Y. Ismail and was assisting in carrying on such lottery. The only difficulty that arises is caused by the definition of "lottery" in section 2 of the Ordinance which reads:—

> "'Lottery' includes any game, method or device whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot, whether the same is held, drawn, exercised or managed within or without the Colony."

Now it can be argued that if this is the only meaning of 'lottery' for the purpose of the Ordinance, the method devised by K. P. Y. Ismail was not a lottery, in that no money was in fact distributed, and that the words "any method . . . . . whereby money . . . . is distributed" cannot be read as if they meant the same thing as "any method . . . . whereby money . . . *may be* distributed."

I agree that the word 'is' cannot be interpreted to mean 'is or may be', as I do not think that the plain words of any statute should be added to for the purpose of correcting a slip in drafting. This principle certainly applies no less strongly when the statute is a penal statute, though generally speaking the same principles of construction apply to all statutes (see *Dyke* v. *Elliott*, L.R. 4 P.C. at p. 191). But I do not think that the omission of the words 'or may be' is necessarily a slip at all. In the first five definitions in section 2 of the Ordinance "Public lottery" and "Place" are defined to 'mean' certain things, whereas "Common gaming house," "Lottery" and "Lottery ticket" are defined as 'including' certain things. There is a presumption therefore that a different interpretation was intended in each case.

It has been called the golden rule of construction that words should be given their ordinary and natural meaning unless that would

lead to some absurdity or some repugnance or inconsistency with the rest of the statute. This rule of construction was originally laid down by Mr. Justice Barton in an Irish case, *Warburton* v. *Loveland*, 1 Hudson & Brook, p. 648, and has been approved and followed by many Courts of the highest authority (see *Bradlaugh* v. *Clarke*, L.R. 8 A.C. p. 354 at p. 384).

Starting with that rule of construction, there can, I think, be no doubt that in its ordinary sense any method by which contributors are given a chance of a prize would be called a lottery whether or not any prize were in fact won. For instance, in a missing word competition the competitors might each have the chance of winning the prize by guessing the right word. If no solution were correct, there would be no prize, but there would clearly have been a lottery in the accepted sense of the word (see *per* Ridley, J. in *Bartlett* v. *Parker*, 1912, 2 K.B. at p. 503, where he says "I think a lottery is held whenever there is a sale of tickets which gives the holders the chance of winning a prize."

A further rule of construction is that the word 'includes' has quite a different effect to the word 'means'. The latter word may provide a dictionary from which it is impossible to depart when construing a particular statute. But the word 'includes' does not lead to the same result, as Brett, M. R. said in *Corporation of Portsmouth* v. *Smith*, 13 Q.B.D. p. 184 at p. 195:—

> "The intention of the clauses is that in construing the Acts the word in addition to its ordinary meaning shall bear the meanings mentioned in the section: the words 'shall include' mean 'shall have the following meanings in addition to the popular meaning !"

Again, in the case of *Dyke* v. *Elliott*, L.R. 4 P.C. p. 184, the question was whether a Steam-tug could be condemned for having been used in "naval or military service" and by section 20 of the Foreign Enlistment Act, 1870, the words "when engaged in naval or military service" shall, as respects a ship, "include any user of a ship as a Transport, Store Ship Privateer or Ship under Letters of Marque." The Steam-tug was being used for towing and clearly did not fall within the definition. The Court, however, at p. 192 pointed out that the words used were not "shall mean" but "shall include" and decided that the words in the definition could have no effect in restricting the meaning to be put upon the words in the prohibitory section and that the Steam-tug was in fact "engaged in naval or militry service."

In "*The Queen* v. *Hermann*, 4 Q.B.D. p. 284, the construction of a penal statute was in question, and at p. 288 Lord Coleridge, C.J. says:—

> "The words 'shall include' are not identical with, or put for, 'shall mean'. The definition does not purport to be complete or exhaustive. By no means does it include any interpretation which the sections of the Act would otherwise have, it merely provides that certain specified cases shall be included."

The only doubt that has been thrown on this rule of construction is in the case of *Dilworth* v. *The Commissioner of Stamps*, 1889 A.C. p. 99. At p. 105 the judgment of the Court sets out the general principle as stated above in the following words:—

> "The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include."

The judgment proceeds (p. 106):

> "But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to shew that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include', and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions."

It is therefore unnecessary, in my opinion, that in order to constitute a lottery within the meaning of the local Ordinance there should be an actual distribution or allotment of a prize or prizes. To take a simple illustration: a Missing Word or other similar form of competition is organised by a newspaper, a prize being offered for a correct solution. The competition is none the less a lottery if there should be no correct solution received and consequently no prize awarded. If the contrary view were to prevail it would mean that no prosecution could be ever commenced under the Ordinance in respect of any matter arising out of a lottery unless and until it could be shown that a prize or prizes had been distributed or allotted. I should find it difficult to believe that such a result was ever contemplated by the Legislature.

Now it does not, of course, necessarily follow from the acceptance of the general proposition

stated above that whenever a member of a club sells or transfers to a non-member a ticket or tickets in a private lottery run by that club he promotes a separate lottery. The learned Deputy Public Prosecutor has not suggested that and I do not wish to be understood as expressing any such view. The question whether a separate and distinct lottery is promoted must depend on the facts of each case.

In the present case the facts are that K. P. Y. Ismail purchased a considerable number of tickets in the private lottery of the Penang Turf Club, and the Appellant as his agent hawked those tickets about Malacca and sold some of them, the arrangement being that if any of those tickets (of every one of which K. P. Y. Ismail was the registered holder) won a prize in the Turf Club lottery, then the amount of the prize-money received by K. P. Y. Ismail, less a commission, would be paid over by him to the person who had purchased that particular ticket from him. It appears to me that every element necessary to constitute a lottery is present in this arrangment. It was a scheme for the distribution or allotment of money in a manner to be determined by chance—the chance depending upon the result of the draw at the Penang Race Meeting.

I take the view, therefore, that on the facts proved in the Court below the Appellant's employer, K. P. Y. Ismail, promoted or organised a separate and distinct lottery; and if that view is correct then the statutory presumption is that the lottery is a public lottery until the contrary is proved. Has the contrary been proved here? Clearly it has not. The learned Magistrate found as a fact that the tickets were being sold to anyone who cared to buy them. The lottery therefore was a lottery to which the public had access.

It follows from this that the tickets sold by the Appellant were "lottery tickets" within the meaning of the Ordinance and that in my opinion the Appellant was properly convicted of an offence under section 4 (d).

As regards the second charge, namely, assisting in carrying on a public lottery, section 9 of the Ordinance provides that:—

> "A person selling lottery tickets . . . . . shall presumed until the contrary is proved to be assisting in a public lottery then in progress."

Here again it is clear that the Appellant has failed to discharge the onus placed upon him, and in my opinion he was properly convicted upon the second charge also.

For these reasons I would dismiss this appeal and confirm the conviction and the order made by the learned Magistrate.

In the course of my Judgment in a case which recently came before the Court of Appeal of the Federated Malay States (*Kader Batcha* v. *Public Prosecutor*), where the material facts were practically identical with those in the present case, I made certain observations which I think it desirable to repeat here, as they apply equally to the circumstances of this case. I said as follows:—

> "I have, of course, arrived at my decision in this appeal upon different grounds from those set forth in the very careful Judgment of the learned Magistrate in the Court below. The problem before the learned Magistrate was a difficult one inasmuch as he had before him the conflicting decisions of Howes, J. in *Chin Tin Chin* v. *Public Prosecutor* (M.L.J. Vol. III, page 223) and of Mudie J. in *Lim Kiang* v. *Public Prosecutor* (M.L.J. Vol. III, page 224), in both of which cases the decisions turned on the answer to the question whether the sale of tickets in a private lottery by a member to an outsider changed that lottery into a public lottery. With respect I think that both learned Judges regarded the matter from a wrong angle, and it is only right to observe that the question whether a separate and distinct lottery had been promoted does not appear to have been suggested to or considered by either of the learned Judges or the learned Magistrate in the present case."

Appeal dismissed.

Solicitors for the Appellant:—

Rogers & Son, Malacca

END OF THE STRAITS SETTLEMENTS OFFICIAL REPORTS